IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

WP(C).No. 27085 of 2007(Y)

PETITIONER:

SHAMITHA P.G., POORNIMA,
VANJIODE, VELLAMUNDA, WAYANAD DISTRICT.

BY ADV. SRI.S.M.PRASANTH

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY**
   SECRETARY, DEPARTMENT OF HEALTH AND FAMILY
   WELFARE, SECRETARIAT, TRIVANDRUM.

2. **THE DISTRICT MEDICAL OFFICER,**
   WAYANAD, MANANTHAVADY, WAYANAD DISTRICT.

3. **THE MEDICAL OFFICER,**
   COMMUNITY HEALTH CENTRE,
   PERIYA, MANANTHAVADY, WAYANAD DISTRICT.

BY GOVERNMENT PLEADER SRI.BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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V.GIRI, J.

W.P.(C). NO. 27085 OF 2007

Dated this the 17th day of October, 2007

J U D G M E N T

Petitioner, who was initially appointed as a stipendiary bonded candidate, was appointed as Staff Nurse on provisional basis by the District Medical Officer of Health, Wayanad under Ext.P1 order for a period of one year or till regular appointment through Kerala Public Service Commission. She served for a period of one year and was relieved from duty with effect from 16.11.06. By Ext.P2 order, she was reappointed for two years with a break after one year. While continuing in service under Ext.P2, she had to go on leave for child birth. According to her, she was therefore absent from duty for a period of almost three months from 27.12.06. She rejoined duty on 14.3.07. Petitioner's grievance is that she has not been granted maternity leave in terms of Rule 100 of Part I KSR, which reads thus:

> **"[A competent authority may grant to a female officer maternity leave on full pay for a period of 135 days from the date of its commencement]**
> **Note 4:- maternity leave under this rule and Rule 101 shall be admissible to provisional female recruits continuing in service (in a single department) beyond one year provided they would continue in service but for proceeding on such leave".**

2. Note 4 is in consonance with Appendix VIII of Part II, KSR. It deals with the rules for grant of leave admissible to a female officer for maternity purposes. In so far as the petitioner is concerned, her period of duty under Ext.P2 was not in excess of one year nor has she continued in duty beyond the period of one year. According to the learned Government Pleader the same view has been taken by this Court in *Dr. Daizy Philip v. The State of Kerala* [ILR 1999 (1) Kerala 619].

3. Learned counsel for the petitioner submits that break in service in so far as the petitioner is concerned, between 16.11.06 to the date of Ext.P2 namely 27.11.06 is an artificial break created by the respondents and if such break is ignored, petitioner would automatically get the benefit of Note 4 of Rule 100.

I am unable to accept that submission. There is no material on record to show that any artificial break was created by the respondents. As a matter of fact, the period from 16.11.06 to 27.11.06 cannot be considered as a break at all. The appointment under Ext.P1 was only for one year from 5.1.2005. The appointment under Ext.P2 was a fresh appointment and not in continuation of Ext.P1. The petitioner had accepted Ext.P2. Ext.P2 will have to be

treated as fresh appointment commencing from the date on which the incumbent joins duty pursuant to Ext.P2.

For all these reasons, I do not find any merits in the contentions raised by the petitioner in this writ petition and therefore the same is dismissed.

V.GIRI, JUDGE

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